EDITOR'S NOTE

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(2)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

LARRY GRANT LONCHAR,

Petitioner,

v.

A.G. THOMAS, Warden, Georgia Diagnostic & Classification Center,

Respondent.

No. 94-~~[illegible]~~ 95-5015

ORIGINAL

PETITION FOR A WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT COURT OF APPEALS

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21 pp

PETITION FOR A WRIT OF CERTIORARI
TO THE ELEVENTH CIRCUIT COURT OF APPEALS

QUESTIONS PRESENTED

I. WHETHER THE ELEVENTH CIRCUIT WAS CORRECT IN CREATING, WITHOUT JUDICIAL PRECEDENT AND WITHOUT NOTICE TO THE PETITIONER, A NOVEL RULE TO BAR THE FIRST PETITION FOR HABEAS CORPUS RELIEF EVER FILED BY PETITIONER BASED ON AMORPHOUS EQUITABLE NOTIONS THAT EXTEND WELL BEYOND RULE 9(A) AND 9(B) OF THE RULES GOVERNING 2254 CASES, WHEN EVERYONE HAD PREVIOUSLY ASSURED PETITIONER THAT THERE WOULD BE NO BAR TO HIS FEDERAL PETITION?

II. WHETHER, WITHOUT PROPER NOTICE OF THE NOVEL RULE AND AN ADEQUATE OPPORTUNITY TO DEVELOP EVIDENCE, A MENTALLY-ILL PETITIONER'S VARYING MOTIVATIONS BEHIND FILING A GOOD FAITH PETITION FOR HABEAS CORPUS RELIEF FOR THE FIRST TIME IN FEDERAL COURT WERE PROPERLY CONSIDERED AS VIRTUALLY DISPOSITIVE OF THE COURT'S DUTY TO CONSCIENTIOUSLY CONSIDER THE ISSUES PRESENTED?

PETITION FOR A WRIT OF CERTIORARI
TO THE ELEVENTH CIRCUIT COURT OF APPEALS

The Petitioner, LARRY GRANT LONCHAR, prays for a writ of certiorari to review the judgment of the Eleventh Circuit Court of Appeals dismissing his first federal habeas corpus petition on novel equitable grounds without any determination on the merits of any issue.

OPINION BELOW

The opinion of the Eleventh Circuit Court of Appeals is reported at Lonchar v. Thomas, ___ F.3d ___ (11th Cir. 1995) (not yet reported; attached as *Exhibit A*).

JURISDICTION

The judgment of the Eleventh Circuit Court of Appeals was entered on June 29, 1995. The jurisdiction of the Supreme Court is therefore timely invoked under *28 U.S.C. § 1257* on the ground that a right or privilege of the defendant is claimed under the Constitution of the United States which right has been denied by Respondent, Warden Thomas.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution provides, in pertinent part, that --

> No person shall . . . be deprived of life . . . without due process of law . . . .

The Sixth Amendment to the United States Constitution provides, in pertinent part, that --

> In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.

The Eighth Amendment to the United States Constitution provides, in pertinent part, that --

> Excess bail shall not be required . . . nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part, that --

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person to life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, Section 9, paragraph 2 of the United States Constitution provides that--

> The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

STATEMENT OF THE CASE

Petitioner was convicted and sentenced to death in DeKalb County, Georgia. His conviction and sentence were affirmed by the Georgia Supreme Court. Lonchar v. State, 258 Ga. 447, 369 S.E.2d 749 (1988). Mr. Lonchar subsequently allowed counsel to

file a petition for a writ of certiorari to this Court, which was denied. Lonchar v. Georgia, 489 U.S. 1019, 109 S. Ct. 818, 103 L. Ed. 2d 808 (1989). A petition for rehearing was also filed and denied. Lonchar v. Georgia, 489 U.S. 1061, 109 S. Ct. 1332, 103 L. Ed. 2d 600 (1989).

Larry Lonchar filed a petition for a writ of Habeas Corpus in Butts County, Georgia, on June 23, 1995. This was dismissed, and a certificate of probable cause denied by the Georgia Supreme Court. He immediately filed his first (and, to date, only) Federal Petition for a Writ of Habeas Corpus in the Northern District of Georgia. The Court held a hearing, denied Respondent Thomas' motion to dismiss, and entered a stay of execution.

Respondent moved to vacate the stay. This was granted this afternoon, effective at 5 p.m. The opinion of the Eleventh Circuit Court of Appeals is to be found at Lonchar v. Thomas, ___ F.3d ___ (11th Cir. 1995) (not yet reported; attached as *Exhibit A*). Mr. Lonchar is currently scheduled to be executed at 7 p.m.

It is worth remembering that this is THE FIRST TIME EVER that a court has totally barred a man who is facing execution FROM EVER LITIGATING ONE FEDERAL HABEAS CORPUS PETITION. It is also worth remembering that this case involves a man who has serious mental problems, and who has been found to suffer from profound depression. These are critical factors ignored in the

rush to execute him because radical assumptions made in the Eleventh Circuit opinion.[1]

REASONS FOR GRANTING THE WRIT

Due to the mental instability of many Death Row inmates, and the frequently intolerable conditions of their confinement, some wonder whether to continue living or let the State carry through out the threat of execution--a dilemma as old as Time.[2] While

1. In proceedings that are related to this case, which demonstrate clearly the mental problems that Larry Lonchar suffers, a state habeas court dismissed a next-friend petition (filed obviously without Larry Lonchar's consent) for lack of standing, and the Supreme Court of Georgia affirmed. See Kellogg v. Zant, 260 Ga. 182, 390 S.E.2d 839, cert. denied, 111 S. Ct. 231, 112 L. Ed. 2d 191, reh. denied, 111 S. Ct. 573, 112 L. Ed. 2d 579 (1990). The same next-friend sought relief from the Federal District Court, which also dismissed the petition. Kellogg v. Zant, 1:90-CV-2336-JTC (N.D.Ga. 1992), aff'd, Lonchar v. Zant, 978 F.2d 637 (11th Cir. 1992). A second next-friend petition was likewise dismissed through the state and federal system last week.

2. Everyone is familiar with the agonies of Hamlet, in his famous soliloquy. Indeed, one inmate might have been quoting it when he asked the court to "please be merciful and give me an endless sleep as soon as you can so this pain and suffering that I have will be no more." People v. Stanworth, 71 Cal. 2d 820, 457 P.2d 889, 80 Cal. Rptr. 49 (1969). Perhaps reflecting on Hamlet's doubts as to the consequences of endless sleep, Stanworth later claimed that his attorney was ineffective for accepting a client's transient self-destructive efforts to seek his own death. People v. Stanworth, 11 Cal. 3d 588, 608, 522 P.2d 1058, 1072, 114 Cal. Rptr. 250, 264 (1974). Stanworth never was executed. In Whitmore v. Arkansas, 495 U.S. 149, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990), this Court recognized the recurrence of the issue. Id., 495 U.S. at 154. Indeed, more than one third of all the prisoners on Death Row in Florida have attempted suicide, judicially or otherwise, while awaiting execution. See Strafer, *Volunteering for Execution: Competency, Voluntariness and the Propriety of Third Party Intervention*, 74 **J. Crim. L. & Criminology**, 860, 872 n. 44 (1983).

there may often have been sincere vacillation on the part of condemned men and women, **no inmate has ever been denied a first writ of habeas corpus on the basis of the unsolicited efforts of "next friends", filed against the inmate's wishes, in earlier pleadings.** On the basis of a novel theory not even advanced by the State in the District Court, which is concededly premised on no legal authority, Larry Lonchar may become the first such person at SEVEN P.M. this evening.

I. WHETHER THE ELEVENTH CIRCUIT WAS CORRECT IN CREATING, WITHOUT JUDICIAL PRECEDENT AND WITHOUT NOTICE TO THE PETITIONER, A NOVEL RULE TO BAR THE FIRST PETITION FOR HABEAS CORPUS RELIEF EVER FILED BY PETITIONER BASED ON AMORPHOUS EQUITABLE NOTIONS THAT EXTEND WELL BEYOND RULE 9(A) AND 9(B) OF THE RULES GOVERNING §2254 CASES, WHEN EVERYONE HAD PREVIOUSLY ASSURED PETITIONER THAT THERE WOULD BE NO BAR TO HIS FEDERAL PETITION?

The Eleventh Circuit vacated the stay on the basis of "abuse of the writ," unconcerned whether "we view this case as one in which Lonchar has abused the writ . . . or simply involv[ed] abusive conduct and misuse of the writ." *Exhibit A, at 7.* The only basis even suggested for this extraordinary holding was Gomez v. United States District Court, 112 S. Ct. 1652 (1992), where this Court considered a § *1983* action brought by an inmate who had previously filed and litigated "four previous federal habeas petitions." Id. at 1653. The only claim for relief on this fifth application was the unconstitutionality of the use of lethal gas.[3] In this case, in his FIRST APPLICATION[4], there

3. Even in spite of the tenuous merits of Harris' one claim for relief, two Justices dissented from the denial of a stay. Id. at 1653.

are several claims that would almost certainly provide grounds for habeas corpus relief. For example, Mr. Lonchar was not even present for large portions of his trial and the prevailing authority is that this must always result in reversal in a capital case.[5]

Larry Lonchar stands to become the first person executed in the United States since 1972 who has asked for, but never been allowed a Federal Habeas Corpus Petition. This case does not, however, involve just Larry Lonchar; it involves a conflict between the Eleventh Circuit panel and every other reported decision on the issue in the past twenty years. There is no case that justifies this action. In arguing his side, the Warden concedes "the unavailability of a case directly on point." See *Warden's XI Motion, at 9.*

There is, however, plenty of precedent in conflict with the Warden's argument, suggesting that this expansion of Rule 9 would be inappropriate. In conflict with the Eleventh Circuit is the recent decision in Collins v. Byrd, 114 S. Ct. 1288 (1994). Byrd

4. (...continued)
4. In arguing for the dismissal of fundamental constitutional claims, "the State's position would be particularly difficult where--as in the present case--a determination has not yet secured a determination on the merits of [any of] his claims." Potts v. Kemp, 764 F.2d 1369, 1371 (11th Cir. 1985).

5. Clear precedent from the Eleventh Circuit indicates that Mr. Lonchar will receive a new trial since he was not present for much of his first trial. This is a capital case and under the authority of "*Diaz* and *Hopt* . . . a capital defendant's right to presence is nonwaivable." Proffitt v. Wainwright, 685 F.2d 1227, 1258 (1982), modified on rehearing, 706 F.2d 311 (11th Cir. 1983); accord Hall v. Wainwright, 733 F.2d 766, 775 (11th Cir. 1984).

had not filed his federal petition for eleven years after the crime (compared to the nine years in this case). The state sought to argue that this would provide the basis for Rule 9(a)'s prohibition against "inexcusable delay," an issue not even argued by Warden Thomas in this case. The Sixth Circuit stayed the case, and the State sought review from this Court.

Eight justices deemed the issue so clear that they did not find any need at all to comment on the summary denial of the State's motion. Importantly, Justice Scalia concurred with their Rule 9(a) analysis, noting that the Supreme Court has not adopted the radical analysis espoused by the Eleventh Circuit today:

> We have for many purposes . . . abandoned (or forgotten) the equitable nature of habeas corpus, and under the current state of our law I cannot say that it would have been unlawful or an abuse of discretion for the Sixth Circuit to require District Court consideration of the habeas corpus petition on its merits, and to say the execution pending that consideration.

Id. at 1288 (opinion of Scalia, J.).[6] The ruling of the Eleventh Circuit to the contrary is not supported by the law.

Further, in conflict with the Eleventh Circuit's analysis is every other circuit in the nation. There is no other court that has judicially expanded the ambit of Rule 9 to create this novel and constitutionally troubling rule. Such a rule was specifically rejected by Congress when *28 U.S.C. § 2254* was enacted. See, e.g.,

6. Justice Scalia's only dissent from the Sixth Circuit's order concerned the timetable and other impositions leveled at the District Court, which he considered "a plain abuse of discretion, if not entirely *ultra vires*." Id. at 1289.

Aiken v. Spalding, 684 F.2d 632, 633 (9th Cir. 1982) ("Congress indicated its disfavor for dismissals for delay under Rule 9(a) by eliminating from the proposed draft of the rule a rebuttable presumption of prejudice that could be invoked by the state after a delay of five years.").

Indeed, in canvassing every habeas case ever decided, Professor Liebman has found no support for the Eleventh Circuit's new doctrine, and has argued that any such "rule, it has been suggested, would risk violating the constitutional provision forbidding suspension of the writ except in times of war or rebellion." Liebman, FEDERAL HABEAS CORPUS PRACTICE AND PROCEDURE, Vol. 2, at 702-03 (2d Ed. 1994) (citing authorities); see also id. at 181 n.66 (quoting Alexander Hamilton); Aiken v. Spalding, 684 F.2d 632, 633 (9th Cir. 1982) ("[l]iberal construction [of Rule 9(a)] also avoids a confrontation with the Suspension Clause of Art. I, § 9, of the United States Constitution").

Even assuming that such a rule of "equity" should properly be adopted, without notice to the petitioner (*see infra*), there are other profound questions that the Eleventh Circuit does not consider. First, for example, can we really attribute the "delay" in this case to Larry Lonchar? He was not the one pursuing the unauthorized "next friend" petition, but was trying to secure his own execution, often referring to Ms. Westmoreland (counsel for Warden Thomas) as "his" attorney. No case has held this against the inmate who wanted to die. In Potts the Eleventh Circuit suggested that there was a problem with "reliance on evidence

presented in a [next-friend] suit to which Potts was not a party. We conclude the court erred in relying on evidence presented in the 'next friend' hearing and that such error requires a remand." Potts v. Zant, 638 F.2d 727, 750 (5th Cir. Unit B, 1981). Reason might well suggest that the court should not rely on the time that elapses as a result of the next friend's unauthorized litigation, either. Certainly, one might think that the efforts made by the Petitioner to shorten this litigation should be taken into account in assessing whether he (or someone else) has been "abusive"--yet the Eleventh Circuit does not pause to consider this.

Second, deliberate justice might question whether the focus should be on the total time elapsed since the moment of sentence, when there is no time bar in state court, and there has never previously been a true opportunity to come to federal court. Indeed, if the focus must be on federal litigation, the federal petition in question here was filed within 24 hours of the exhaustion of such remedies as the State of Georgia saw fit to provide.[7] There is no case that holds that the prior unauthorized petitions bar Mr. Lonchar now.

This list is far from exhaustive, but it does illustrate the need for this Court to intervene and prevent the hurried execution

7. If Mr. Lonchar had "adopted" the federal next-friend petition that someone else filed, he would not have been able to secure federal relief at that time. Rather, he would have been sent back to state court to exhaust his claims, since he had never completed his first state court post-conviction proceeding. He has only now done so, and he cannot be legally faulted for not bringing his federal petition before Monday--immediately upon exhaustion of his state court remedies.

of the first person who has been wholly denied federal habeas corpus review in twenty years.

Certainly, where the questions involved would seem to be so weighty, there is no authority to fashion a novel rule on a couple of hours' notice and with only forty minutes available for developing this petition.[8] Again, while few reasonable jurists would admit the existence of Warden Thomas' novel "rule of law," it should not be promulgated to take a life by judicial fiat in contravention of all precedent and without deliberate review.

II. WHETHER, WITHOUT PROPER NOTICE OF THE NOVEL RULE AND AN ADEQUATE OPPORTUNITY TO DEVELOP EVIDENCE, A MENTALLY-ILL PETITIONER'S VARYING MOTIVATIONS BEHIND FILING A GOOD FAITH PETITION FOR HABEAS CORPUS RELIEF FOR THE FIRST TIME IN FEDERAL COURT WERE PROPERLY CONSIDERED AS VIRTUALLY DISPOSITIVE OF THE COURT'S DUTY TO CONSCIENTIOUSLY CONSIDER THE ISSUES PRESENTED?

Even were we to agree that the Eleventh Circuit was correct to judicially legislate a change to the clear rules governing habeas corpus relief, there are many other complex issues that might be debated at length when assessing the policy considerations of the lower court's ruling. One is, of course, whether equity would support a rule resulting in dismissal when the record indicates clearly that Larry Lonchar has been told by State Court Judge

8. For this reason, since all the issues are so interrelated, Petitioner incorporates his prior arguments in all prior pleadings in the courts below (lodged with this Court as they have been filed) to properly frame the issues presented in this Court.

Connelly, by Federal District Judge Camp,[9] by his own counsel and--periodically--by counsel for the Warden[10] that relief would be available should he elect to proceed with his appeals. It would be fundamentally inequitable to create a novel rule now in the heat of the moment that would result in the execution of Larry Lonchar within hours.

This rule suddenly sprang up today. Yesterday, the Warden certainly seemed to be arguing along the lines of Rule 9(b). Today, this argument changed, and turned to this hitherto unheard-of "rule" extraneous to anything previously seen in habeas corpus litigation. To analogize to the equity required of state courts, before it can be applied to bar relief a "procedural rule must be 'clearly announced to defendant and counsel.'" Wheat v. Thigpen, 793 F.2d 621, 625 (5th Cir. 1986) (quoting Henry v. Mississippi,

9. During the next-friend hearing (held without Petitioner's authorization) Judge Camp advised Mr. Lonchar that "you can change you mind up until the time, of course, sentence is executed, and bring a petition for habeas corpus." (11/14/91 Hrg. at 443). How does equity compel the Eleventh Circuit to turn this promise into a lie?

10. Counsel for the Warden seemed to shift another position yesterday announcing that no such assurance had been made with respect to federal court. However, in state court counsel announced that there had been no "specific waiver on the record in any particular proceeding." (6/23/95 Hrg. at 21) (emphasis supplied) To the extent that counsel now argues that there was such a waiver in federal court, counsel apparently refers to the prior federal proceedings where Judge Camp discussed the possibility of Mr. Lonchar's "waiv[ing] any appeals on [his] behalf in federal court or otherwise." (11/14/91 Hrg. at 437) (emphasis supplied) It would seem that this would, were it really a waiver, operate in both state and federal court. However, it would seem still clearer that there was no such waiver since Judge Camp went on to advise Mr. Lonchar that "you can change you mind up until the time, of course, sentence is executed, and bring a petition for habeas corpus." Id. at 443.

379 U.S. 443, 448 n.3, 85 S. Ct. 564, 567 n.3, 13 L. Ed. 2d 408 (1965)). Petitioner had no forewarning that this novel rule might be sprung on him, and therefore no meaningful opportunity to address the argument with evidence.

One very troubling issue is the "rule" enacted today that purports to look to Mr. Lonchar's "motivations" in filing this petition. While his motivation not to file before now might well be relevant to Rule 9(a) or even on a successive petition a Rule 9(b) question, there is absolutely no basis to look behind his good faith litigation of constitutional claims now and ask why he filed his petition.

Nonetheless, Warden Thomas has argued--with undeniable imagination--that one focus of this novel rule of equity should be why Larry Lonchar plans to litigate his federal constitutional rights. Without debate, or citation to authority, the Eleventh Circuit adopted this argument, opining without any support in the petition that "Lonchar does not explain why this court should entertain a habeas petition that is explicitly brought to delay his execution, not to vindicate his constitutional rights." See *Exhibit A, at 7.*

This is simply not the case. The unrebutted testimony in the lower court was that Larry Lonchar did wish to vindicate his constitutional rights. What does the Eleventh Circuit suggest? That when Larry Lonchar said that he meant to challenge his conviction and sentence, he actually meant that he did not? That a waiver may be found beyond a reasonable doubt when the petitioner

expressly says that he does not mean to waive his rights? This is a novel rule of law indeed. Cf. Moran v. Burbine, 475 U.S. 412, 106 S. Ct. 1135, 1141, 89 L. Ed. 2d 410 (1986) (State must bear burden of showing waiver "made with a full awareness both of the right being abandoned and the consequences of the decision to abandon it").

Larry Lonchar had previously seen no worthwhile reason to avoid death. Now he has finally seen that his litigation could achieve broader purposes than to save his own life. This does not, of course, mean that he is insincere about winning his case. Indeed, he explicitly agreed to litigate all issues presented:

> Q. Let me ask you this, Mr. Lonchar. You, your attorneys, have filed a petition in court that contains 59 pages, and you signed the verification that you have personal knowledge of the allegations in the Petition for Writ of Habeas Corpus, and that they are true and correct, and that you seek the relief requested in there. Did you sign that verification, I assume?
>
> A. Yes, Your Honor.
>
> * * *
>
> Q. Now, I understand your point with regard to the question of the manner of execution so that you can donate your organs, that's the point you were making to me a moment ago; is that correct?
>
> A. That's correct.
>
> Q. Now, a great deal of the petition goes far beyond that, and alleging irregularities and violations of your rights that would affect both your sentence and conviction and your sentence of execution in a prior state court proceeding. It is your wish to pursue those claims through a petition for Federal Habeas Corpus Relief? Do you understand my question.

> A. Yes, Your Honor. Personally, I have to agree that I have to pursue this position to follow on what I would like to do, so I would have to say to the Court that, yes, I do.

(F.H.T. at 18-19)

Judge Camp felt that Mr. Lonchar's major motivation behind his litigation was to use his case as a vehicle for systemic change, to abolish the Electric Chair and provide inmates on Death Row with an option to save other lives, if in fact their executions could not be averted. Judge Camp explicitly did not find, however, that this vitiated the good faith with which the rest of the petition was to be litigated. Such a finding would have been entirely insupportable.

While the Warden does advert to this in passing as an element of his novel rule, this Court should think long and hard before ruling that Larry Lonchar's motives in litigating all the issues in his case are relevant to what the outcome will actually be. On the face of the petition, it would probably be true to say that he has much more chance of winning the challenge to his conviction than to change the method of execution.[11]

It is true, but entirely irrelevant to the merits of the claims, that Larry Lonchar filed his 1993 state habeas petition to avoid his brother's suicide. (F.H.T. at 19) Now, one precipitant

---

11. As mentioned above, clear precedent indicates that Mr. Lonchar will also, or alternatively, receive a new trial since he was not present for much of his first trial. This is a capital case and under the authority of "*Diaz* and *Hopt* . . . a capital defendant's right to presence is nonwaivable." Proffitt v. Wainwright, 685 F.2d 1227, 1258 (1982), modified on rehearing, 706 F.2d 311 (11th Cir. 1983); accord Hall v. Wainwright, 733 F.2d 766, 775 (11th Cir. 1984).

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without ever being allowed the chance to vindicate his rights. This Court cannot let that happen without considering the merits of his petition in a humane and deliberate manner.

CONCLUSION

WHEREFORE, Petitioner respectfully moves that this Court grant certiorari to consider the important questions presented above.

Respectfully Submitted,

BY: _____

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504/558-9867

JOHN MATTESON
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COUNSEL FOR PETITIONER

Certificate of Service

I hereby certify that I have this day served a copy of the foregoing pleading by mail upon Mary Beth Westmoreland, Assistant Attorney General, 132 Judicial Building, Atlanta, Ga. 30334.

This 29th day of June, 1995.

_____

STATE BOARD OF PARDONS AND PAROLES

DENIAL OF APPLICATION FOR STAY OF EXECUTION

WHEREAS: Upon the 27th day of June, 1987, three sentences of death were imposed on the Defendant in the case of *The State of Georgia vs. Larry Grant Lonchar*, Case No. 86-CR-3747 before the Superior Court of DeKalb County; and,

WHEREAS: An order of the Superior Court of DeKalb County dated the 7th day of June, 1995, directs that Larry Grant Lonchar shall be executed by the Department of Corrections during a certain period of time ending at noon on the 30th day of June, 1995; and,

WHEREAS: The State Board of Pardons and Paroles having received from attorney John Matteson on behalf of his client Larry Grant Lonchar an application for clemency requesting the Board exercise its authority to enter an order staying the execution of Larry Grant Lonchar; and,

WHEREAS: The State Board of Pardons and Paroles having reviewed and deliberated on the application and the records of the Board regarding Larry Grant Lonchar;

THEREFORE: Pursuant to the provisions of Article IV, Section II, Paragraph II (d) of the Constitution of the State of Georgia, by the Members of the State Board of Pardons and Paroles, IT IS ORDERED HEREBY that the clemency application on behalf of Larry Grant Lonchar requesting his execution be stayed is DENIED.

For the State Board of Pardons and Paroles upon this 29th day of June, 1995;

/s/ Wayne Garner
Chairman

SEAL

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 95-8821

LARRY GRANT LONCHAR,

Petitioner-Appellee,

versus

ALBERT G. THOMAS, Warden,
Georgia Diagnostic and
Classification Center,

Respondent-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

Before TJOFLAT, Chief Judge, COX and DUBINA, Circuit Judges.

BY THE COURT:

Larry Grant Lonchar's request for a temporary stay of execution pending consideration of his emergency petition for rehearing with suggestion of rehearing en banc is DENIED.

The petition for panel rehearing is DENIED. The mandate shall issue immediately.

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Miguel J. Cortez
Clerk

In Replying Give Number
Of Case And Names Of Parties

June 29, 1995

Luther D. Thomas, Clerk
United States District Court
Northern District of Georgia
2211 United States Courthouse
75 Spring Street, S.W.
Atlanta, Georgia 30303-3361

No. 95-8821
Larry Grant Lonchar -v- Albert G. Thomas, etc.
D.C. No. 1:95-CV-1656-JTC

(X) The enclosed certified copy of the judgment and a copy of this court's opinion are hereby issued as the mandate of this court.

( ) The enclosed certified copy of the Rule 36-1 decision and judgment are hereby issued as the mandate of this court.

( ) The motion for stay of mandate has been denied. The enclosed certified copy of the judgment and a copy of this court's opinion are hereby issued as the mandate of this court.

( ) The Supreme Court has denied certiorari. The enclosed certified copy of the judgment and a copy of this court's opinion are hereby issued as the mandate of this court.

( ) The Supreme Court has denied certiorari. This court's mandate having previously issued, no further action will be taken by this court.

( ) Enclosed is the Bill of Costs supplementing this court's mandate which has previously issued.

Also enclosed are the following:

( ) Bill of Costs
( ) Original exhibits, consisting of:
( ) Original record on appeal or review, consisting of:

Please acknowledge receipt on the enclosed copy of this letter.

Sincerely,

MIGUEL J. CORTEZ, Clerk

By: Joyce T. Pope
Deputy Clerk
(404) 331-2904

Encl.

c: Mary Beth Westmoreland
John Matteson
Clive Stafford Smith

MDT-1
2/92

United States Court of Appeals

FOR THE ELEVENTH CIRCUIT

No. 95-8821

District Court Docket No. 1:95-CV-1656

LARRY GRANT LONCHAR,

Petitioner-Appellant,

versus

ALBERT G. THOMAS, Warden,
Georgia Diagnostic and
Classification Center,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

Before TJOFLAT, Chief Judge, COX and DUBINA, Circuit Judges.

J U D G M E N T

This cause came to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was taken under submission by the Court upon the motion and response on file;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be and the same is hereby VACATED.

Entered: June 29, 1995
For the Court: Miguel J. Cortez, Clerk

By: Mattie Davidson
Deputy Clerk

ISSUED AS MANDATE: JUNE 29, 1995